

LEASE

Agreement No. _____

This Lease ("Lease") is made as of this ____ day of _____ 201____, by and between the CITY OF SANTA BARBARA (hereinafter called "Landlord"), and _____ (hereinafter called "Tenant").

The following are attached hereto as Exhibits and hereby made a part of this Lease as though fully set forth herein.

EXHIBIT A - Lease Area
EXHIBIT B - Nondiscrimination Certificate
EXHIBIT C - Water and Energy Conservation Guidelines
EXHIBIT D - Tidelands Grant
EXHIBIT E - Personal Guaranty

Lease and Agreements

In consideration of the rents to be paid hereunder and of the agreements, covenants and conditions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I. BASIC LEASE TERMS

A. [§101] Premises

Upon and subject to the terms, covenants and conditions hereof, Landlord hereby leases and demises to Tenant, and Tenant hereby leases and takes from Landlord, the Premises which is the real property and improvements described in the attached Exhibit "A" which is incorporated by this reference as though fully set forth herein. It is mutually agreed that the leasing hereunder is upon and subject to the terms, covenants and conditions hereof, and that Tenant covenants, as a material part of the consideration of this Lease, to keep, perform and observe each and all of said terms, covenants and conditions by Tenant to be kept, performed or observed, and that this Lease is made upon the condition of such performance.

As used herein, the term "Premises" shall mean and include approximately 734 square feet of second floor office space of the interior of the "Building Shell" which portion is crosshatched on Exhibit "A", attached hereto and made a part hereof by this reference, designated as 132-B Harbor Way.

B. [§102] Term

The term of this Lease shall commence _____ ("Commencement Date") and terminate five years from the Commencement Date, ("Termination Date").

C. Title and Condition of the Premises

[§103] Title to the Premises

Title to the leasehold of the Premises is hereby conveyed by Landlord to Tenant free and clear of all recorded liens, encumbrances, covenants, assessments, easements, leases and taxes, except as are consistent with this Lease and except as may be set forth in the Tidelands Grant by the State of California to the City of Santa Barbara, a copy of which is attached hereto as Exhibit "D".

[§104] Condition of Premises

Except as otherwise specifically provided in this Lease, the Premises shall be conveyed to Tenant in "as-is" condition. It shall be the sole responsibility of Tenant, at Tenant's sole expense, to investigate and determine the conditions of the Premises, the condition of the existing improvements on the Premises and the suitability of such conditions for the business to be conducted by Tenant.

D. [§105] Rent

Tenant shall pay to Landlord, without abatement, deduction or offset whatsoever in lawful money of the United States of America, at 132-A Harbor Way, Santa Barbara, California 93109, or to such other person or at such other place as Landlord may from time to time designate by notice to Tenant, rent during the term of this Lease in accordance with the following Sections.

1. [§106] Base Rent

Beginning with the Commencement Date and continuing throughout the term of the Lease, Tenant shall pay to Landlord a monthly Base Rent of \$2,040.

Minimum monthly rent shall be referred to hereinafter as the "Base Rent".

Tenant shall pay the Base Rent to Landlord in advance on the first day of each month. Base Rent for fractional months shall be appropriately prorated.

Base Rent shall be adjusted upward, but not downward, commencing December 1, 2012, and each December 1 thereafter during the term of this Lease by using the Consumer Price Index (CPI) ("Urban Wage Earners and Clerical Workers") for Los Angeles-Riverside-Orange County Area, for October and dividing it by the CPI, same index, for the preceding October and multiplying the product times the current year's minimum annual Base Rent to obtain the succeeding year's minimum annual Base Rent.

j. Method of Payment. If any payment of Base Rent made by check, draft or money order is returned to Landlord due to insufficient funds, or otherwise,

more than once in any given five (5) year period, Landlord shall have the right at any time thereafter, upon written notice to Tenant, to require Tenant to make all subsequent Base Rent payments by cashier's or certified check.

3. [§107] Late Charges

Tenant recognizes that late payment of Base Rent or any other payment due hereunder from Tenant to Landlord will result in administrative and other additional expenses to Landlord, the extent of which additional expense is extremely difficult and economically impractical to ascertain. Tenant therefore agrees that if Base Rent or any other payment due hereunder from Tenant to Landlord remains unpaid ten (10) days after said payment is due, Tenant shall pay to Landlord a late charge equal to fifteen percent (15%) of the amount of the delinquent Base Rent. or other payment, which late charge shall be added to and become part of the delinquent Base Rent. or any other payment. Tenant agrees that such amount is a reasonable estimate of the loss and expense to be suffered by Landlord as a result of such late payment by Tenant and may be charged by Landlord to defray such loss and expense. The provisions of this Section 108 in no way relieve Tenant of the obligation to pay Base Rent. or other payments on or before the date on which they are due, nor do the terms of this Section 107 in any way affect Landlord's remedies pursuant to Article XI hereof in the event any Base Rent or other payment is unpaid after the due date.

4. [§108] No Set-Offs

Base Rent, and any and all other payments payable hereunder to or on behalf of Landlord shall be paid without notice or demand and without set-off, counter-claim, abatement, suspension, deferment, deduction or defense.

II. USE, OPERATION AND MAINTENANCE OF THE PREMISES

A. Use

1. [§201] Use of the Premises

Tenant shall use the Premises exclusively as a business office, and for no other use without the prior written approval of the Waterfront Director. Retail sales are not permitted from the Premises.

2. [§202] Nondiscrimination

There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Premises or the improvements to be constructed thereon, or any part thereof, and the Tenant itself, or any person claiming under or through it, shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessee or vendees of the Premises or any part thereof.

In addition, Tenant agrees to comply with the Certificate of Non-discrimination, attached as Exhibit B and incorporated herein.

3. [§203] Restrictions Upon Use

Tenant agrees that, in connection with the use and operation of the Premises, it will not:

- a. Use or permit the use of any advertising medium employing sound amplifying devices and or technology, including but not limited to, loudspeakers, phonographs, public address systems, sound amplifiers, radios or broadcasts within the Premises in such manner that any sounds reproduced, transmitted or produced shall be directed beyond the interior of the Premises, and will keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the interior of the Premises;
- b. Cause or permit objectionable odors to emanate or be dispelled from the Premises;
- c. Permit any use of the Premises or any part thereof in a manner likely to injure the reputation of the Waterfront and Harbor;
- d. Permit undue accumulations of garbage, trash, rubbish or any other refuse;
- e. Permit any materials provided to customers, visitors, clients or patrons, including beverage containers and implements and condiments to be of any material except that which is biodegradable in ocean waters. Modification to this stipulation is subject to the prior written approval of the Waterfront Director;
- f. Permit or provide any outside seating except at the sole discretion of Landlord;
- g. Permit any use of the Premises, or acts done by Tenant, which will cause a cancellation of any insurance policy covering the Harbor, or any part thereof, or any building or improvements thereon, any article which may be prohibited by any insurance policies covering the Waterfront area, said buildings or improvements;
- h. Waste water, gas, electricity or any other utilities;
- i. Permit the use of vending machines or any type of currency, ticket, token or coin-operated video game or machine.

4. [§204] Other Use Obligations

- a. No Improvements Tenant agrees that no improvement shall be erected, placed upon, operated or maintained within the Premises, nor any business or activity conducted or carried on therein or therefrom, in violation of the terms of this Lease, or in violation of any regulation, order of law, statute, bylaw or ordinance of a governmental agency having jurisdiction over the Premises.

b. Signs All signs shall be installed maintained and permitted in accordance with the Sign Regulations of the Santa Barbara Municipal Code and, in addition, shall be approved by the City Administrator. "Sign" shall have the meaning set forth in said Sign Regulations.

c. Governmental Requirements Tenant shall at all times comply with and shall pay all costs and expenses which may be incurred or required to be paid in order to comply with any and all laws, statutes, ordinances, which govern, apply to or are promulgated with respect to the operation and use of the Premises by Tenant in connection with its business. Specifically, but without limiting the generality of the foregoing, Tenant shall make any alterations or additions required to be made to or safety appliances or devices required to be maintained or installed in or about the interior of all improvements located upon the Premises under any laws, statutes and ordinances, now or hereafter adopted, enacted or made and applicable to the Premises.

d. Lighting. The Premises shall be lighted for security purposes during hours of darkness in a manner at least equivalent to the security lighting provided in similar properties on Harbor Way, unless Landlord consents to a lesser amount of lighting in writing or unless to do so is contrary to any law, statute, ordinance or final judgment of any court having jurisdiction then in effect, in which event, the standards so prescribed shall be adhered to while in effect.

B. [§205] Operation

The parties recognize and acknowledge that the manner in which the Premises is used and operated is of critical concern to Landlord, and to the Santa Barbara Waterfront by reason of (a) the prominence of the location of the Premises, (b) the impact which the Tenant's operation is expected to have upon surrounding properties and upon the operation of the Harbor.

In order to give Landlord assurance as to the manner in which the Premises will be used and operated, Tenant agrees that, at all times during the term of this Lease, Tenant shall maintain a first class business with a level of quality and character of operation which is at least comparable to other locations in the Santa Barbara area with the same use and/or equal to that of Tenant's other locations, if any.

C. [§206] Landlord's Obligations - Repairs

Landlord shall maintain the Building Shell, defined as the concrete pad and foundation, bearing and exterior walls, and roof of the building in which the Premises is located.

If repairs, rebuilding or replacement obligations of Landlord hereunder or under the terms of any lease affecting the building in which the Premises is located require closure of all or a portion of the area occupied by the Tenant to the public, it shall be done in a manner to perform in the public interest. Should repair, reconstruction or building of any harbor facility require Landlord to close the Premises to public access, Landlord agrees that such work shall be completed in a manner to perform in the public interest. Landlord shall have no liability to Tenant for lost business caused by an interruption of access to the Premises. However, should the Landlord by its sole action prevent public access to the Premises for

more than 72 hours under circumstances not covered by business interruption insurance, and the business would be open but for the Landlord's action, the Tenant shall be entitled to a daily offset equal to 1/30 of the minimum monthly rent for each day after the first 72 hours until public access to the Premises is restored by the Landlord.

No offset shall be available to Tenant once public access is restored by Landlord. No offset shall be made available following restoration of access or after completion of improvements that are Landlord's obligation to provide, regardless of whether or not all of the Tenant's improvements are completed and regardless of any delay to the Tenant's improvement work caused by, or on account of, the work done by Landlord.

D. [§207] Tenant's Obligations

Except as provided in Section 206 Tenant, at its sole cost and expense, shall maintain the Premises and the interior improvements of the Premises in good condition and repair. Except as provided in Section 206, Landlord shall have no responsibility to maintain the Premises or the interior improvements of the Premises. Tenant shall be responsible for keeping the area within ten (10) feet of all customer entrances clean of rubbish and litter. Without limiting the generality of the foregoing, Tenant's obligation to maintain and repair hereunder shall exist throughout the term of this Lease. Tenant shall be responsible for maintenance of all glass windows and glass doors, screens, screen doors, doors, and locks. Tenant shall be responsible for maintenance of all electrical and plumbing services and facilities on the customer side of the utility meter. Tenant shall also be responsible for electrical conduits, circuit breakers, conductors, ground equipment, outlets, switches, light bulbs, ballasts and all other associated electrical devices on the customer side of the meter. Tenant shall be responsible for maintenance of all telephone, cable TV and other communications equipment and services on the customer side of the outlet box or junction provided by Landlord or the utility company.

Tenant shall be responsible for all mechanical equipment, as well as ancillary connections to the equipment, including, but not limited to, electrical, gas and water utility service, vents, drains, supporting structures and aesthetic architectural structures.

Tenant shall initiate repairs to all structures necessitated by utility malfunction for which Tenant is responsible within twelve (12) hours of initial discovery and pursue the repairs diligently until completion, subject to the approval of the Waterfront Director.

Tenant shall keep the Premises within ten feet of the Premises clean, sanitary, and functional at all times. No offensive materials, sand or refuse matter nor any substance constituting any unnecessary, unreasonable or unlawful fire hazard or material detrimental to the public health shall be permitted on or within ten (10) feet of the Premises. Tenant shall see that all garbage or refuse is collected as often as necessary to maintain the Premises in a clean and sanitary condition. All garbage shall be placed in an approved trash enclosure designated by Landlord.

E. [§208] Landlord's Right to Repair

If Tenant fails to maintain or make repairs or replacements as required herein, Landlord may notify Tenant in writing of said failure. Should Tenant fail to correct the situation within a reasonable time thereafter, as established by Landlord, Landlord may make the necessary correction and the cost thereof, including, but not limited to, the cost of

labor, materials and equipment and administration, shall be paid by Tenant within ten (10) days of receipt of a statement of said cost from Landlord. Landlord may, at its option, choose other remedies available herein, or by law.

III. LAWS, TAXES AND UTILITIES

A. [§301] Compliance with Laws

Tenant agrees to comply with all City, State, and federal laws, rules and regulations, now or hereinafter in force, pertaining to Tenant's use of the Premises pursuant to this Lease. Tenant shall, at its sole cost and expense, comply with and shall cause all its operators, licensees and customers to comply with the Uniform Fire Code in connection with the prevention of fire or the correction of hazardous conditions, which apply to the Premises.

Tenant shall comply with each and every requirement of all policies of public liability, fire and other insurance, which at any time may be in force with respect to the Premises. The judgment of any court of competent jurisdiction or the admission of Tenant in any action or proceeding against it, whether Landlord be a party thereto or not, that Tenant has violated any such ordinance or statute in the use of the Premises shall be conclusive of that fact as between Landlord and Tenant.

B. Taxes and Assessments

1. [§302] Generally

Tenant acknowledges and agrees that this Lease may create a possessory interest subject to property taxation. Tenant agrees to pay and discharge, as additional rent for the Premises during the term of this Lease, before delinquency, all taxes (including, without limitation, possessory interest taxes associated with the Premises and the execution of this Lease), assessments, fees, levies, license and permit fees and other governmental charges of any kind or nature whatsoever, general and special, ordinary and extraordinary, foreseen, and unforeseen or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing (all of the foregoing collectively called "taxes" for all purposes under this Lease) which are or may be at any time or from time to time during the term of this Lease levied, charged, assessed or imposed upon or against the Premises, or against any of Tenant's personal property now or hereafter located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby or which may be imposed upon any taxable interest of Tenant acquired pursuant to this Lease on account of any taxable possessory right which Tenant may have acquired pursuant to this Lease, or which may be levied upon or measured by the rent payable hereunder, including, without limitation, any gross receipts tax levied by the City of Santa Barbara, the State of California, the federal government or any other governmental body with respect to receipt of such rent by Landlord whether or not the same shall have been in the express contemplation of Landlord and Tenant.

2. [§303] Additional Rent

In the event the Premises or any possessory interest therein, should at any time be subject to ad valorem taxes or privilege taxes levied, assessed or imposed on such property, Tenant shall pay taxes upon the assessed value of the entire Premises and not merely upon the assessed value of its leasehold interest.

4. [§304] Evidence of Non-payment

The certificate, advice, receipt or bill of the appropriate official designated by law to make or issue the same or to receive payment of any such taxes, of nonpayment of such taxes shall be prima facie evidence that such taxes are due and unpaid or have not been paid at the time of the making or issuance of such certificate, advice, receipt or bill.

5. [§305] Landlord's Attorney-in-Fact

Landlord appoints Tenant the attorney-in-fact of Landlord for the purpose of making all payments to be made by Tenant pursuant to any of the provisions of this Lease to persons or entities other than Landlord. Tenant shall provide Landlord with satisfactory evidence of payment. In case any person or entity to whom any sum is directly payable by Tenant under any of the provisions of this Lease shall refuse to accept payment of such sum from Tenant, Tenant shall thereupon give written notice of such fact to Landlord and shall pay such sum directly to Landlord at the address specified in Section 1402 hereof, and Landlord shall thereupon pay such sum to such person or entity.

6. [§306] Landlord's Right to Cure

If Tenant, in violation of the provisions of this Lease, shall fail to pay and to discharge any taxes, Landlord may (but shall not be obligated to) pay or discharge such taxes, and the amount paid by Landlord and the amount of all costs, expenses, interest and penalties connected therewith, including attorneys' fees, together with interest at the maximum rate permitted by law shall be deemed to be and shall be payable by Tenant as additional rent and shall be reimbursed to Landlord by Tenant on demand.

7. [§307] Permitted Contests

Tenant shall not be required to pay, discharge or remove any taxes (including penalties and interest) upon or against the Premises or any part thereof, so long as Tenant shall in good faith contest the same or the validity thereof by appropriate legal proceedings and shall give to Landlord prompt notice in writing of such contest at least ten (10) days before any delinquency occurs, provided that said legal proceedings shall operate to prevent the collection of the taxes so contested, or the sale of the Premises or any part thereof, to satisfy the same, and provided, further, that Tenant shall, prior to the date such taxes are due and payable, have given such reasonable security as may be required from time to time in order to ensure the payment of such taxes to prevent any sale, foreclosure or forfeiture of the Premises or any part thereof, by reason of such nonpayment. Such security shall be not less than a sum equal to one and one-quarter times the amount of such taxes and all penalties, fines and interest which may be assessed thereon and may be in the form of a bond issued by a surety acceptable to Landlord.

In the event of any such contest and the final determination thereof adversely to Tenant, Tenant shall, before any fine, interest, penalty or cost may be added thereto for nonpayment thereof, pay fully and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs and expenses that may have accrued thereon or that may result from any such contest by Tenant, and after such payment and discharge by Tenant, Landlord will promptly return to Tenant such security as

Landlord shall have received in connection with such contest. Any such proceedings to contest the validity or amount of taxes or to recover back any taxes paid by Tenant shall be brought by Tenant, at Tenant's expense, in the name of Tenant; provided, however, that if any such proceeding shall be brought by Tenant, Tenant shall indemnify and save harmless Landlord against any and all loss, cost or expense of any kind (including, but not limited to, reasonable attorneys' fees and expenses) which may be imposed upon or incurred by Landlord in connection therewith.

C. [\$308] Services and Utilities

1. Except as otherwise provided in this Lease, Landlord shall provide all required utilities up to a point on the Premises convenient to and at the discretion of Landlord, and may arrange for separate meters to monitor the consumption of utilities on the Premises. Landlord shall not be liable for the failure or malfunction of utilities or services to the Premises.

2. Tenant shall pay promptly as the same become due and payable all charges, costs, bills and expenses of and for gas, electricity, sewer, air conditioning, telephone, water and all other services and utilities of whatever kind furnished or supplied to or used by Tenant or any other party in connection with the use, occupancy, maintenance or operation of the Premises or any part thereof. Tenant hereby expressly waives any and all claims against Landlord for compensation, damages, payments or offset based upon or with respect to any and all loss or damage now or hereafter sustained by Tenant by reason of any defect, deficiency, failure or impairment of whatever kind or nature in any service or utility furnished or supplied to or used by Tenant or any other party in connection with the use, occupancy, maintenance or operation of the Premises or any part thereof. Such services and utilities shall include, without limitation, the water supply system, drainage, sewer system, wires leading to or inside the Premises, gas, electric or telephone services.

3. Tenant shall pay a \$0.15 per square foot (\$110.00) utility surcharge to Landlord each month.

IV. CONSTRUCTION AND LIENS

A. [\$401] Additional Construction, Alterations and Repairs

Prior to making any alterations to the Premises, Tenant shall obtain the written approval of the Waterfront Director.

B. [\$402] General Construction Standards

1. All Tenants' construction, alteration or repair work permitted herein shall be accomplished expeditiously and diligently. Tenant shall take all necessary measures to minimize any damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected thereby. Tenant shall repair, at its own cost and expense, any and all damage caused by such work and shall restore the area upon which such work is performed to a condition, which is equal to or better than the condition which existed prior to the beginning of such work. In addition, Tenant shall pay (or cause to be paid) all costs and expenses associated therewith and shall indemnify and hold Landlord harmless from all damages, losses or claims attributable to the performance of such work. Dust, noise and other effects of such work shall be controlled using the best accepted

methods customarily utilized in order to control such deleterious effects associated with construction projects in a populated or developed area.

2. Any remodeling or reconstruction work undertaken on any existing building shall at all times be of first quality construction and architectural design and in accordance with plans therefore submitted to and approved by Landlord. Any remodeling or reconstruction of any building shall conform to the original design concepts so that the exterior of all buildings, including, without limitation, the exterior elevations and color thereof, and all other improvements, will be architecturally and aesthetically compatible and harmonious with the other buildings and improvements in the surrounding area to create a uniform general plan for the Premises and the surrounding area, to the satisfaction of the City of Santa Barbara design review boards.

C. [§403] Remodeling and Replacement with the Same Facilities

Notwithstanding anything to the contrary contained in this Lease, no requirement for Landlord's consent for any plan or proposal for any construction work on the Premises shall apply in the case of reconstruction of buildings or improvements which have been damaged or destroyed by fire or other casualty or which have become worn out or obsolete, so long as any such reconstruction will not substantially alter the design, size, height, bulk, suitability for allowed uses, and exterior appearance of the improvements as they existed prior to the event or condition requiring reconstruction, and provided that notice of intent to reconstruct or construct is given by Tenant to Landlord at least thirty (30) days prior to the commencement of any work thereon, except in the case of emergency reconstruction or repair in which case the Tenant shall have the obligation to obtain all the necessary approvals and permits prior to any construction or reconstruction.

V. OWNERSHIP OF IMPROVEMENTS

A. [§501] Ownership During Term

Title to the Building Shell shall remain in City. All improvements to real property constructed on the Premises by Tenant as permitted or required by this Lease shall, during this Lease term, be and remain the property of Tenant, provided however, that Tenant shall have no right to waste, destroy, demolish or remove the improvements, and provided, further, that Tenant's rights and powers with respect to the improvements are subject to the terms and limitations of this Lease.

B. [§502] Ownership at Termination

1. At the expiration or sooner termination of this Lease term, Landlord may, at Landlord's election, demand the removal from the Premises, at Tenant's sole cost and expense, of all improvements, fixtures, and/or furnishings, as specified in the notice provided for below. A demand to take effect at the normal expiration of the term shall be effected by notice given at least thirty (30) days before the expiration date. A demand to take effect on any other termination of this Lease shall be effectuated by notice given concurrently with notice of such termination or within ten (10) days after such termination.

2. Any fixtures or furnishings not removed by Tenant within thirty (30) days

of the termination of this Lease shall be deemed to be abandoned by Tenant and shall, without compensation to Tenant, then become the Landlord's property, free and clear of all claims to or against them by Tenant or any third party.

3. Upon termination of this Lease, whether by expiration of the term or otherwise, all improvements not required to be removed by Tenant as hereinabove provided shall, without compensation to Tenant, then remain Landlord's property, free and clear of all claims to or against them by Tenant or any third party.

4. Tenant shall defend and indemnify Landlord against all liability and loss arising from any such claims or from Landlord's exercise of the rights conferred by this Section 502.

5. Notwithstanding any provision in this Lease to the contrary, in the event Tenant fails to remove any property as demanded by Landlord, then Landlord after ten days written notice to Tenant, and without waiving or releasing Tenant from any obligation of Tenant hereunder, may (but shall not be required to) place such property in storage for the account of and at the expense of Tenant in which event the provisions of Section 1105 shall be applicable.

VI. ASSIGNMENT AND SUBLETTING

A. [§601] Assignment and Subletting

In view of the fact that the Premises constitutes a major and indispensable component of the Waterfront Department's plan for the Harbor and that, therefore, the identity of the Tenant of the Premises is of the utmost concern to the Landlord, Tenant, its successors and assigns, shall not assign, either voluntarily or by operation of law, its interest in this Lease to all or any part of the Premises or allow any other person or entity (except Tenant's authorized representatives) to occupy or use all or any part of the Premises without the prior written consent of Landlord, which consent may be withheld in the sole and absolute discretion of Landlord during the initial two (2) years of the lease term, and which consent may be withheld, at any time, if the proposed transferee does not have the qualifications and financial responsibility as determined by Landlord necessary and adequate to fulfill the obligations undertaken in this Lease by Tenant, or for other good reasons. Tenant shall not have the right to sublease or sublet.

In giving its consent pursuant to the above paragraph, Landlord shall, in addition to any other requirements or conditions, require compliance with the following:

1. Any proposed transferee shall have the qualifications and financial responsibility, as determined by Landlord, necessary and adequate to fulfill the obligations undertaken in this Lease by Tenant. In addition, for the purposes of this provision, the following acts of Tenant are examples of and shall be considered assignments and shall require the prior written consent of Landlord to be effective:

a. Partnership and L.L.C. Transfers If Tenant is a partnership or a California limited liability company, a transfer of capital interest to a new partner or partners (or member or members) which computed alone or cumulatively with previous transfers would result or has resulted in the transfer of ownership of a more than twenty-five percent (25%)

interest in the capital on profits of the partnership or limited liability company; provided that the following transfers shall not be considered in computing whether a cumulative total of more than twenty-five percent (25%) of the capital of the partnership or limited liability company has been transferred:

(1) Transfers to persons who are related by blood or marriage to the transferring partner or member or to a trust established for the benefit of the transferring partner or member or such persons;

(2) Transfers resulting from the death of the partner or member whether such transfers are made pursuant to the will of the deceased partner or member an *inter vivos* or testamentary trust instrument or the laws of intestacy.

b. Corporations: The transfer of more than twenty-five percent (25%) of the voting stock in a corporation which is either itself the Tenant, or is a general partner in a partnership which is the Tenant; provided that the following transfers shall not be considered in computing whether a cumulative total of more than twenty-five percent (25%) of the voting stock has been transferred:

(1) Transfers to persons who are related by blood or marriage to the transferring shareholder or to a trust established for the benefit of the transferring shareholder or such persons;

(2) Transfers resulting from the death of the shareholder whether such transfers are made pursuant to the will of the deceased shareholder an *inter-vivos* trust instrument or the laws of intestacy;

2. Any proposed transferee shall have expressly assumed, by instrument in writing, for itself and its successors and assignees, and expressly for the benefit of Landlord, all of the obligations of Tenant under this Lease. Any proposed transferee shall have agreed to be subject to all of the conditions and restrictions to which Tenant is subject. However, the failure for any reason, of any transferee, or any successor in interest whatsoever to this Lease, to have assumed such obligations, shall not relieve or except such transferee or successor of or from such obligations, conditions or restrictions or deprive or limit Landlord of or with respect to any rights or remedies or controls with respect to this Lease, the Premises or any required construction of improvements. It is the intent of this Lease, to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Lease, that transfer of this Lease, or any interest herein, however consummated or occurring, and whether voluntary or involuntary, shall not operate, legally or practically, to deprive or limit Landlord of or with respect to any rights or remedies or controls provided in or resulting from this Lease with respect to the Premises and construction of improvements that Landlord would have had, had there been no such transfer or change.

3. There has been submitted to Landlord for review, and Landlord has approved, all instruments and other legal documents involved in effecting transfer of the leasehold interest.

4. A processing fee of \$3,000 has been paid to Landlord for review of each proposed assignment.

5. If, notwithstanding the provisions of this section, this Lease is assigned

by operation of law in connection with any proceedings under state or federal insolvency or bankruptcy law, or any comparable law, whether for liquidation or reorganization, Landlord shall have a right of first refusal to purchase this Lease. If any trustee or debtor in possession (collectively "trustee") receives an acceptable offer to purchase this Lease, such trustee shall notify Landlord in writing of the terms of such offer. If Landlord within thirty (30) days after receipt of such notice, indicates in writing its agreement to purchase this Lease on the terms stated, the trustee shall sell and convey this Lease to Landlord on the terms stated in the notice. If the Landlord does not indicate its agreement within thirty (30) days, the trustee shall thereafter have the right to assign this Lease to the party making the offer on the terms of such offer. If such offeror does not purchase this Lease on such terms and conditions, Landlord shall have a right of first refusal to purchase this Lease in the event of any later offer for the purchase of this Lease. If an offeror purchases this Lease in connection with any proceedings under state or federal insolvency or bankruptcy law, or any comparable law, whether for liquidation or reorganization, Landlord shall have the option to purchase this Lease from such party for an amount equal to the amount such party paid for this Lease, at any time within one (1) year from the date of such offerors' purchase thereof.

Tenant represents and agrees for itself and any successor in interest of itself that without the prior written approval of Landlord, there shall be no significant change (voluntary or involuntary) in the membership, management or control of Tenant which would prevent or impair the ability of Tenant to complete its obligations under this Lease.

Tenant shall promptly notify Landlord of any and all significant changes in the membership, management or control of Tenant whether legal or beneficial, or of any other act or transaction involving or resulting in any change in the ownership or identity of Tenant, or with respect to the identity of the parties in control of Tenant or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information. This Lease may be terminated by Landlord hereof if there is any significant change in the membership, management or control of Tenant whether legal or beneficial, or of any other act or transaction involving or resulting in any change in the ownership or identity of Tenant, or with respect to the identity of the parties in control of Tenant or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information.

No assignment of any interest in this Lease made with Landlord's consent, or as herein otherwise permitted, shall be effective until there shall have been delivered to Landlord an executed counterpart of such assignment containing an agreement, in recordable form, executed by the assignor and the proposed assignee, wherein and whereby such assignee assumes due performance of the obligations on the assignor's part to be performed under this Lease to the end of the term hereof.

The consent by Landlord to an assignment hereunder shall not in any way be construed to relieve Tenant from obtaining the express consent in writing of Landlord to any further assignment.

Notwithstanding an assignment by Tenant hereunder to which Landlord has consented, Tenant shall remain liable for all liabilities and obligations incurred by Tenant hereunder prior to the date of said assignment.

C. [§603] Successors and Assigns

The terms, covenants and conditions contained herein shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators and assigns of the parties hereto, if approved by Landlord pursuant to Section 601. If the Lease is transferred to a party not approved in advance, Landlord may terminate Lease in its sole discretion.

D. [\$604] Release of Landlord

In the event of a sale, assignment, transfer or conveyance by Landlord of the Premises or its rights hereunder, the same shall operate to release Landlord from any liability incurred following the effective date of such assignment upon any of the covenants or conditions, expressed or implied, herein contained in favor of Tenant, and in such event, Tenant agrees to look solely to the responsibility of the successor in interest of Landlord in and to the Premises or this Lease. This Lease shall not be affected by any such sale, assignment, transfer or conveyance, and Tenant agrees to attorn to any such purchaser or assignee.

VII. INSURANCE AND INDEMNIFICATION

A. [\$701] Required Insurance Policies

Tenant shall maintain and keep in force during the term of this Lease, for the mutual benefit of Landlord and Tenant, at Tenant's sole cost and expense, the following insurance applicable to the Premises:

1. Comprehensive General Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) each occurrence combined single-limit bodily injury and property damage. Coverage thereunder shall include contractual liability, personal injury, owners' and contractors' protection, fire legal, liquor liability if appropriate, products completed operations coverage and "all risk coverage".

2. Property Insurance From and after the Commencement Date and continuing throughout the term of this Lease, Landlord shall have the risk of loss or damage to the Building Shell. From and after the Commencement Date and continuing throughout the term of this Lease, Tenant, at its sole cost and expense, shall insure the Premises and all improvements, equipment and fixtures within the Premises against loss or damage resulting from fire, lightning, vandalism, malicious mischief, those risks ordinarily defined as "all risk coverage" and in addition thereto for loss or damage resulting from flood surface water, waves, tidal water or tidal waves, overflow of streams or other bodies of water or spray from any of the foregoing, all whether driven by wind or not; water which backs up through sewers or drains or water below the surface of the Wharf or ground which exerts pressure on or flows, seeps or leaks through sidewalks, driveways, foundations, walls, basement or other floors or through doors, windows or any other openings in such sidewalks, driveways, foundations, walls or floors.

3. Business Interruption Insurance Tenant, at its cost, shall maintain business interruption insurance insuring that the minimum monthly rent will be paid to Landlord for a period of at least six (6) months if the Premises are destroyed or rendered inaccessible by a risk described in subsection [901].

Such insurance shall be in amount equal to 100% of the full replacement cost of said improvements, equipment and fixtures and shall be placed and maintained with one insurance company or companies which is or are acceptable to Landlord.

If Tenant is unable to obtain flood, tidal wave or other water related coverage, the Landlord reserves the right to choose to self-insure the property on behalf of the Tenant and charge a reasonable fee. The Landlord may also choose to waive the insurance requirement, if Tenant bears all risk. Any decision in this regard is at the Landlord's sole discretion.

The Landlord has no liability for an interruption in utility services necessary to operate the Premises or interruption in access to the leased premises by accident, storm damage or any other reason.

All such insurance policies, along with their endorsements, shall name Landlord and Tenant as named insureds. In the event of such loss, Tenant's obligations to rebuild or replace shall be as set forth in Article IX (DESTRUCTION).

B. [§702] General Insurance Policy Requirements

1. All insurance provided for in this Article VII (Section 701 et seq.) shall be effected under valid and enforceable policies in form and substance satisfactory to Landlord issued by insurers satisfactory to Landlord authorized to do business in the State of California and the policies required pursuant to this Article VII shall name Landlord as an additional insured. A certificate of each insurance policy in the form acceptable to City shall be provided to the City of Santa Barbara on or before the Commencement Date and upon the renewal of each policy. Tenant may provide any insurance required hereunder by a blanket insurance policy covering the Premises and any other properties.

2. Tenant hereby expressly waives on behalf of its insurers hereunder any right of subrogation against Landlord, which any such insurers may have against Landlord by reason of any claim, liability, loss or expense arising under this Lease.

3. Insurance Revisions Landlord shall retain the right at any time to review the coverage, form and amount of insurance required hereby. If, in the opinion of Landlord, the insurance provisions in this Lease do not provide adequate protection for Landlord and for members of the public using the Premises, Landlord may require Tenant to obtain insurance sufficient in coverage, form and amount to provide adequate protection.

Landlord's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of the risks which exist at the time a change in insurance is required.

The procuring of such required policy or policies of insurance shall not be construed to limit Tenant's liability hereunder nor to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding said policy or policies of insurance, Tenant shall be obligated for the full and total amount of any damage, injury or loss caused by negligence or neglect connected with this Lease or with use or occupancy of the Premises.

C. [§703] Hold Harmless and Indemnification

Tenant shall investigate, defend, indemnify and hold the City of Santa Barbara and its respective officers, agents and employees harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorneys' fees) which may be imposed upon, incurred by or asserted against the City of Santa Barbara or its respective officers, agents and employees arising out of or in any way connected to Tenant's possession or use of the Premises.

In case any action or proceeding is brought against Landlord or the City of Santa Barbara or its respective officers, agents and employees by reason of any such claim, Tenant, upon written notice from the City of Santa Barbara, shall at Tenant's expense resist and defend such action or proceeding by counsel approved by the City of Santa Barbara in writing.

VIII. SURRENDER; HOLDING OVER

A. [§801] Surrender of Premises

1. At least ninety (90) days before the last day of the term hereof, Tenant shall give to Landlord a written notice of its intention to surrender the Premises on that date. Nothing contained herein shall be construed as an extension of the term hereof or as consent of Landlord to any holding over by Tenant.

2. At the end of the term, or other sooner termination of this Lease, Tenant will surrender and deliver to Landlord the possession of the Premises, together with all fixtures and improvements, in good order, condition and repair, free and clear of all occupancies, and free and clear of all liens and encumbrances other than those, if any, presently existing or created by Landlord, without payment or allowance whatsoever by Landlord on account of any such improvements. Tenant may, upon or prior to the termination of this Lease, remove, at Tenant's sole cost and expense, all movable furniture, trade fixtures and equipment belonging to Tenant, provided that upon any such removal, Tenant, at Tenant's sole cost and expense, shall repair all damage, of any kind or nature, caused by such removal. Property not so removed shall be deemed abandoned by Tenant, and title to the same shall thereupon immediately pass to Landlord without payment or allowance whatsoever by Landlord on account of such property. At Landlord's sole discretion and upon Landlord's written request, Tenant shall remove, at Tenant's sole cost and expense, any and all improvements constructed or installed by or at the expense of Tenant, and, at no cost and expense to Landlord, Tenant shall repair or cause the repair of any damage resulting from such removal.

B. [§802] Holding Over

If Tenant shall retain possession of the Premises or any part thereof without Landlord's prior written consent following the expiration or sooner termination of this Lease

for any reason, then Tenant shall pay to Landlord for each day of such retention double the amount of the daily Base Rent in effect on the date of such expiration or termination. Tenant shall also indemnify and hold Landlord harmless from any loss or liability resulting from delay by Tenant in surrendering the Premises, including, without limitation, any claims made by any succeeding Tenant founded on such delay. Alternatively, if Landlord in its sole discretion gives written notice to Tenant of Landlord's election thereof, such holding over shall constitute renewal of this Lease on a month to month basis. Except after delivery by Landlord of such written notice, acceptance of rent by Landlord following expiration or termination shall not constitute a renewal of this Lease and nothing contained in this Section 802 shall waive Landlord's right of re-entry or any other right. Unless Landlord exercises the option hereby given to it, Tenant shall be only a Tenant at sufferance, whether or not Landlord accepts any rent from Tenant while Tenant is holding over without Landlord's written consent.

IX. DESTRUCTION

A. [\$901] Total Destruction

If, during the term, the basic building structure is totally destroyed, rendering the Premises unusable, either the Tenant or the Landlord can terminate this lease immediately by giving notice to the other party. Such notice must be given within ten days of the destruction.

B. [\$902] Landlord's Right To Terminate on Partial Destruction

Multi-tenant Building

If there is destruction to the building in which the Premises is located that exceeds thirty three per cent (33)% of the then replacement value of the building, Landlord can elect to terminate this lease whether or not the Premises is destroyed, as long as Landlord terminates the leases of all tenants in the building.

C. [\$903] Abatement or Reduction of Rent

In case of destruction, for any risk covered under the business interruption insurance required of Tenant under Section 701, Tenant shall pay Landlord rent for the twelve (12) month period following the destruction. After said twelve (12) month period, there shall be total abatement of rent until the Premises is fully restored and usable by Tenant. Should Landlord terminate this Lease under Section 902, any rent paid by Tenant during said twelve (12) month period shall be rebated to Tenant by Landlord.

D. [§904] Waiver of Civil Code Sections

Tenant waives the provisions of Civil Code §1932(2) and Civil Code §1933(4) with respect to any destruction of the Premises.

X. EMINENT DOMAIN

A. [§1001] Definition of Taking

The term “taking” as used herein means the exercise by any governmental or other permitted authority of the power of eminent domain or the exercise of any similar governmental power to take and any purchase or other acquisition in lieu of condemnation, including, but not limited to, a voluntary sale or conveyance in lieu of condemnation.

B. [§1002] Total Taking

In the case of a taking (other than for temporary use or of only the leasehold estate hereunder) of the fee of the entire Premises, this Lease shall terminate as of the date on which such taking shall be effective. In case of a taking (other than for temporary use or of only the leasehold estate hereunder) of such substantial part of the Premises as shall result, in the good faith judgment of Tenant, in the Premises remaining after such taking (even if restoration were made) being economically unsuitable for the use being made of the Premises at the time of such taking, Tenant, at its option, may terminate this Lease by written notice given to Landlord within sixty (60) days after such taking. Any taking of the Premises of the character referred to in this Section 1002, which results in the termination of this Lease, is referred to as a “total taking.”

C. [§1003] Partial Taking

In the event of a taking of a portion of the Premises which is not a total taking (a “partial taking”), then and in that event:

1. This Lease shall remain in full force and effect as to the portion of the Premises remaining immediately after such partial taking, without any abatement of Base Rent, Percentage Rent or any other payment payable hereunder; and,

2. Tenant will promptly commence and complete (subject to delay, hindrance or prevention by reason of any of the causes mentioned in Article XII [Section 1200 et seq.]) restoration of the Premises as nearly as possible to its condition and character immediately prior to such partial taking, except for any reduction in area caused thereby; provided that, in the case of a partial taking for temporary use, Tenant shall not be required to effect such restoration until such partial taking is terminated. Such restoration shall be performed in a good and workmanlike manner and undertaken in accordance with plans and specifications submitted to and approved by Landlord in accordance with Sections 401 and 402 hereof, and otherwise in accordance with the applicable provisions of this Lease.

D. [§1004] Application of Awards

Awards and other payments on account of a taking (less costs, fees and expenses incurred by Landlord, and Tenant in connection with the collection thereof) shall be applied as follows:

1. Net awards and payments received on account of taking, other than (a) a taking for temporary use, (b) a taking of only the leasehold estate hereunder, or (c) a total taking, shall be held and applied to pay the cost of restoration of the Premises. The balance, if any, remaining after restoration shall be divided between Landlord and Tenant as they may agree and, in the absence of such agreement, such balance shall be paid to Landlord and Tenant in the ratio, as nearly as practicable, which (a) the sum of (1) the then fair market value of Landlord's reversionary interest in the improvements and (2) the fair market value of the land, valued as unencumbered by this Lease, unimproved and to be used for the uses specified in this Lease bears to (b) the then fair market value of Tenant's interest in the improvements for the remainder of the term of this Lease, provided, however, that Tenant's share of any such balance shall be applied first to any payment of any past due Base Rent, Percentage Rent or any other payment payable hereunder, including, without limitation, any past due tax payments.

2. Net awards and payment received on account of (a) a taking for temporary use or (b) a taking of only the leasehold estate created by this Lease shall be paid to Tenant, except that:

a. If any portion of any such award or payment is made by reason of any damage to or destruction of the Premises, and there exists in this Lease an obligation to restore said Premises, such portion shall be held and applied to pay the cost of restoration thereof; and

b. If any portion of any award or payment on account of a taking for temporary use relates to a period beyond the date of termination of this Lease term, such portion shall be paid to Landlord; and

c. If, at any time such award becomes payable to Tenant, any Base Rent, Percentage Rent or other payments payable hereunder (including, without limitation, any tax payments) shall be due and unpaid, such award shall be first applied to the payment thereof.

3. With the exception of payments to tenant for loss of business goodwill and Tenant improvements at cost less depreciation in accordance with the Internal Revenue Code, any award and payment received on account of a total taking shall be paid to the Landlord, including any and all payments for leasehold bonus value, fixtures and equipment not considered Tenant improvements and severance damages.

E. [§1005] Notice of Taking

In case of a taking of all or any part of the Premises or the commencement of any proceeding or negotiations which might result in such taking, the party having notice of such taking or of the commencement of any such proceeding or negotiations shall promptly give written notice thereof to the other party. Landlord and Tenant shall jointly prosecute their claims for an award in a single proceeding. Landlord and Tenant shall not prosecute separate claims for an award, except that Tenant and any subtenant may prosecute

separate claims for awards for moving expenses or on account of the taking of any removable trade fixtures or for the unamortized portion of any leasehold improvements made by any subtenant, but only to the extent that any such separate award shall not diminish the award made to Landlord and Tenant in respect of their joint claim.

F. [§1006] Disbursement of Awards on Partial Taking

All awards or other payments received on account of a partial taking shall be paid to the Landlord, to be held and disbursed in the same manner as insurance proceeds, except that any portion of such award(s) remaining after completion of any restoration shall be disbursed by the Landlord to the parties pursuant to subsection 1 of Section 1004.

XI. DEFAULT

A. [§1101] Default by Tenant

1. Any of the following occurrences or acts shall constitute an "Event of Default" under this Lease:

a. If Tenant fails to pay the rent when due as described herein. Landlord may give Tenant notice to pay all sums due within three (3) days, and if such payment is not made within three (3) days, Landlord may terminate the tenancy without discharging any amount due. If Tenant at any time during the term (and regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, in law, in equity or before any administrative tribunal which have or might have the effect of preventing Tenant from complying with the terms of this Lease) shall fail (1) to make payment of any installment of Base Rent. or of any other payment herein specified to be paid by Tenant, when due or (2) to observe or perform any of Tenant's other covenants, agreements or obligations hereunder; and if any such default shall not be cured as to any default referred to in clause (1) within ten (10) days after receipt of written notice thereof by Tenant or as to any default referred to in clause (2) with the exception of an abandonment which shall have no applicable cure period, within thirty (30) days after Landlord shall have given to Tenant written notice specifying such default (or, in the case of any default referred to in clause (2) which cannot with diligence be cured within such thirty-day period, if Tenant shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with diligence, it being intended, in connection with a default not susceptible of being cured with diligence within such thirty-day period, that the time within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with diligence); or

b. If Tenant shall file a petition in bankruptcy or for reorganization or for any arrangement pursuant to any present or future federal bankruptcy act or under any similar federal or state law, or shall be adjudicated a bankrupt or insolvent or shall make an assignment for the benefit of its creditors or shall admit in writing its inability to pay its debts generally as they become due, or if a petitioner or answer proposing the adjudication of Tenant as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof; or

c. If a receiver, trustee or liquidator of Tenant or of all or substantially all of the property of Tenant or of the Premises shall be appointed in any proceeding brought by Tenant, or if any such receiver, trustee or liquidator shall be appointed

in any proceeding brought against Tenant and if such receiver, trustee or liquidator shall not be discharged within sixty (60) days after such appointment, or if Tenant shall acquiesce in or consent to such appointment; or

d. If Tenant shall be liquidated or dissolved or shall begin proceedings toward its liquidation or dissolution; or

e. If Tenant shall fail:

(1) To timely pay any taxes when due; or

(2) To observe or perform any of Tenant's other covenants, agreements or obligations under any agreement with Landlord relating to taxes; or

f. If Tenant shall commit or suffer to be committed any waste or impairment of the Premises or any part thereof; or

g. If Tenant shall alter the improvements in any manner, except as expressly permitted by this Lease; or

h. If Tenant shall fail to maintain insurance as required by this Lease; or

i. If Tenant shall engage in any financing except as approved by Landlord and permitted by the terms of this Lease, or any other transaction creating any mortgage on the Premises, or place or suffer to be placed thereon any lien or other encumbrance to the premises, or suffer any levy or attachment to be made thereon; or

j. If Tenant uses the Premises for purposes other than those provided for in this Lease without the prior written approval of Landlord; or

k. If Tenant fails to be open for business on the Premises for more than seventy-two consecutive hours, except in the case of such closures as may be allowed or provided for by this Lease, (hereafter "abandonment.") An abandonment shall constitute an automatic event of default and forfeiture of this Lease and entitle Landlord to reenter and retake the premises pursuant to the provisions of Section 1101 (2) without allowing Tenant a period to cure the event of default; or

l. If Tenant fails to comply with any applicable laws as evidenced by a notice of violation issued by the applicable enforcement agency. In the case of health or fire agency enforcement, an event of default shall occur when the Tenant receives a notice of a violation of health or fire regulations and fails to cure the violation within the initial time period set by the enforcement agency in its first notice of violation; or

m. If Tenant fails to obtain written approval of the Waterfront Director before construction, renovation or repair of any portion of the Premises and fails to conform to and abide by all rules and regulations relative to the Premises and uses herein authorized, which Premises and uses are subject at all times to applicable rules, regulations, resolutions, ordinances and statutes of the City of Santa Barbara, County of Santa Barbara, State of California, the Federal Government and all other governmental agencies when applicable; or

n. If Tenant fails to obtain all required permits or licenses for repair, construction or renovation of any portion of the Premises or use therein from the regulatory body having jurisdiction thereof before such repair or use is undertaken; or

o. If Tenant attempts to assign, lease, or sublease any part of the Premises without Landlord's advanced approval; or

2. Upon the occurrence of any such Event of Default, in addition to any and all other rights or remedies of Landlord hereunder or by law or in equity, it shall be, at the option of Landlord, without further notice or demand of any kind to Tenant or any other person:

a. The right of Landlord to declare the term hereof ended and to terminate this Lease, in which event Tenant shall promptly surrender possession of the Premises to Landlord, and pay to Landlord all Base Rent and all other payments due Landlord hereunder to the date of such termination. If Tenant does not so promptly surrender the Premises, Landlord shall have the immediate right to re-enter the Premises and take possession thereof including the right to refuse to permit and to deny the right of the Tenant to remove any or all of Tenant's movable furniture, trade fixtures, equipment, improvements or personal property, notwithstanding any other provision of this Lease, located in, or upon the Premises, and take exclusive possession of same as a guarantee of payment for past due rents, without any obligation or liability to the Tenant, and remove all persons therefrom, and Tenant shall have no further claim thereon or thereunder.

b. The right of Landlord, without terminating this Lease, to enter the Premises and occupy the whole or any part thereof for and on account of Tenant and to collect said rent and any other rent that may thereafter become payable, to refuse, notwithstanding any other term or provision of this Lease, to permit and to deny the right of Tenant to remove any or all of Tenant's movable furniture, trade fixtures, equipment, improvements or personal property located in, on or upon the Premises, and to use and take exclusive possession of same without payment to Tenant or cost to Landlord for so long as Landlord so occupies the Premises or until this Lease is terminated pursuant to subsection c. below; and

c. The right of Landlord, even though it may have re-entered the Premises pursuant to subsection b. above, to thereafter elect to terminate this Lease.

3. Tenant further acknowledges and agrees that the service by Landlord of any notice pursuant to the unlawful detainer or similar such statute of the State of California and the surrender of possession pursuant to such notice shall not be deemed to be a termination of this Lease. Tenant hereby irrevocably appoints Landlord as agent and attorney-in-fact of and for Tenant to so enter upon the Premises in the Event of Default by Tenant hereunder, to remove any and all furniture and personal property whatsoever situated upon the Premises, and to place such furniture and personal property in storage for the account of and at the expense of Tenant. In the event that Tenant shall not have paid the cost of such storage after ninety (90) days, Landlord may, at its discretion, sell any or all of such furniture and personal property at public or private sale in such manner and at such times and places as Landlord in its sole discretion may deem proper, without notice to Tenant or any demand upon Tenant. If Landlord so elects to sell such furniture and personal property, Landlord shall apply the proceeds of such sale first, to the cost and expenses of such sale, including reasonable attorneys' fees actually incurred, second, to the payment of the costs of or charges

for removing and storing any such furniture and personal property, third, to the payment of any other sums of money which may then or thereafter be due to Landlord from Tenant under any of the terms of this Lease, and fourth, the balance, if any, to Tenant. Tenant hereby waives all claim for damages that may be caused by Landlord's re-entering and taking possession of the Premises or removing and storing furniture and personal property as herein provided, and will save Landlord harmless from any losses, costs or damages occasioned thereby. No such re-entry shall be considered or construed to be a forcible entry as the same is defined in the Code of Civil Procedure of the State of California.

4. Should Landlord elect to terminate this Lease pursuant to any of the provisions of above, Landlord may recover from Tenant as damages:

a. The worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

b. Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses incurred by Landlord in maintaining or preserving the Premises after such default, preparing the Premises for reletting to a new tenant, any repairs or alterations to the Premises for such reletting, leasing commissions or other costs necessary or proximate to reletting the Premises; plus

c. At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of California.

As used hereinabove, the term "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. For purposes of determining Landlord's damages under this subsection 4, the annual rent payable hereunder shall be deemed to be equal to the average rent paid by Tenant for the calendar year immediately preceding the date of Tenant's default.

5. Trade Fixtures and Equipment. Notwithstanding Section 501 and 502, if an Event of Default occurs, all of Tenant's fixtures, equipment, improvements, additions, alterations shall remain on the Premises and in that event, and continuing during the length of said default, Landlord shall have the right to take the exclusive possession of same and to use same without payment to Tenant or any other party.

6. Remedies Not Exclusive No right or remedy herein conferred upon or reserved to Landlord or Tenant is intended to be exclusive of any other right or remedy, except as expressly stated herein, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter existing at law or in equity or by statute, except such rights or remedies as are expressly limited herein.

7. Waiver of Rights of Redemption Tenant hereby waives for itself and all those claiming under it all rights which it may have under any present or future constitution, statute or rule of law (a) to redeem the Premises after termination of Tenant's right of occupancy by order or judgment of any court or by any legal process or writ or (b) which exempts property from liability for debt or for distress for rent.

All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of rent. Subject to any rights of Tenant to contest, if Tenant shall fail to pay any sum of money, other than Base Rent, required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, and such failure shall continue for fifteen (15) days after notice thereof by Landlord, Landlord may, but shall not be obligated so to do, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such act on Tenant's part to be made or performed as in this Lease provided. All sums so paid by Landlord and all necessary incidental costs and expenses, together with interest thereon at the rate of ten (10%) percent per annum from the date of such payment by Landlord shall be payable, as additional rent to Landlord on demand, and Tenant covenants to pay any such sums, and Landlord shall have, in addition to any other right or remedy of Landlord, the same rights and remedies in the event of the nonpayment thereof by Tenant as in the case of default by Tenant in the payment of the rent.

If Tenant fails to maintain quality of character and operation in the manner specified in this Lease, then:

1. Landlord shall notify Tenant in writing, specifying the complaint and, if possible, requesting means of cure.

2. If Tenant has not cured the condition specified in the complaint within thirty (30) days after receipt of notice, or if cure cannot be achieved within thirty (30) days and Tenant has not commenced cure and is not proceeding diligently, then:

a. Landlord may re-enter the Premises without terminating this Lease and, as Tenant's attorney-in-fact, cure the default for the account of Tenant; and

b. If sums of money are expended by Landlord, Tenant agrees to repay such sums immediately upon demand and, if not paid, said sums shall bear interest at the rate of ten (10%) per annum until paid. All said sums shall constitute additional rent due hereunder.

C. [§1103] Personal Service Nature of Tenant's Obligations

Tenant acknowledges that the Premises constitutes a major and indispensable component of Santa Barbara City Waterfront Department's plan for the Harbor and that, therefore, the identity and qualifications of the Tenant as an ocean related service business as further described in paragraph [§ 201], Use of the Premises, is of the utmost concern to the City of Santa Barbara. The parties acknowledge that pursuant to this Lease, Tenant is, to a significant degree, performing personal services for Landlord and that the provisions in this Lease relating to assignment and default are based upon the particular and unique circumstances under which this Lease is made.

D. [§1104] Default by Landlord

In the event Landlord shall fail to perform or observe any of the covenants or provisions contained in this Lease on the part of Landlord to be performed or observed within thirty (30) days after written notice from Tenant to Landlord specifying the particulars

of such default or breach of performance, or if more than thirty (30) days shall be reasonably required because of the nature of the default, if Landlord shall fail to proceed diligently to cure such default after such notice, then in that event, Tenant shall have all rights and remedies provided by law.

E. [§1105] Abandonment -Title to Fixtures and Equipment

If Tenant shall abandon, subject to Section 1101(k), vacate or surrender said Premises or be dispossessed by process of law, or otherwise, any furniture, trade fixtures, business equipment or other personal property belonging to Tenant and left on the Premises shall, at the option of Landlord, be deemed to be abandoned and title thereto shall thereupon pass to Landlord without any payment or allowance whatever by Landlord on account of such property. In such event such property may be retained by Landlord as Landlord's property or be disposed of, without accountability, in such manner as Landlord elects, or if Landlord shall give written notice to Tenant to remove such property, such property shall be removed by Tenant at Tenant's sole cost and expense.

F. [§1106] No Recourse

Tenant, other than judicial award, agrees that it shall have no recourse with respect to any obligation of Landlord under this Lease, or for any claim based upon this Lease, or otherwise, against any incorporator, shareholder, officer, director or attorney, past, present or future of Landlord, or against any other person than Landlord, and against Landlord only to the extent of the value of the land and improvements, whether by virtue of any constitution, statute, rule of law, rule of equity, enforcement of any assessment as penalty, or by reason of any matter prior to the execution and delivery of this Lease, or otherwise, all such liability, by Tenant's execution and delivery hereof and as part of the consideration for Landlord's obligations hereunder being expressly waived.

XII. [§1200] UNAVOIDABLE DELAY; FORCE MAJEURE

If either party shall be delayed or prevented from the performance of any act required by this Lease by reason of war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restriction or priority; unusually severe weather; inability to secure necessary labor, materials or tools; acts of the other party; acts or failures to act of any public or governmental agency or entity (except acts or failures to act of Landlord shall not excuse performance by Landlord); or any other similar causes, without fault and beyond the reasonable control of the party claiming an extension of time to perform, performance of such act shall be excused for the period of the delay, provided, however, that nothing in this Section 1200 shall excuse Tenant from the prompt payment of any Base Rent or other monetary charges required of Tenant, and provided, further, that the party delayed or prevented from the performance of any act as above described has notified the other of such delay or prevention within thirty (30) days of the inception thereof, and has thereafter kept said party regularly informed of the status of such delay or prevention.

XIII. [§1300] ENTRY BY LANDLORD

A. Landlord and its agents may enter and examine the Premises at all reasonable times in order to determine whether Tenant is in compliance with the provisions hereof, and to access the equipment room in the attic above the Premises. Landlord will exercise this right of inspection in a way that will cause as little interference, inconvenience, and disturbance to Tenant's operation as possible.

B. Landlord and its authorized representatives reserve and shall have the right to enter upon the Premises at all reasonable times to inspect the same, to make necessary repairs and adjustments, to show said Premises to prospective purchasers, mortgagees or tenants or to post notices, including, without limitation, notices of non-responsibility, all of the foregoing without abatement of rent. Except in the event of an emergency, Landlord shall use all reasonable efforts to limit such entry to regular business hours after giving reasonable notice to Tenant of the time and purpose of the entry. In the event of an emergency, Landlord shall have the right to use any and all means which Landlord may deem necessary or proper to open any doors in order to obtain entry to any portion of the Premises, and any entry to the Premises, or portions thereof obtained by Landlord by any of said means or otherwise, shall not under any circumstances be construed or deemed to be forcible or unlawful entry into or detainer of, the Premises or an eviction, actual or constructive of Tenant from the Premises or any portions thereof.

XIV. GENERAL

A. [§1400] Estoppel Certificates

Landlord or Tenant, as the case may be, shall execute, acknowledge and deliver to or for the benefit of the other or to or for the benefit of any Lender, at any time, from time to time, at the expense of the party requesting a certificate as hereinbelow described, promptly upon request, its certificate certifying (1) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications), (2) the dates, if any, to which all rents due hereunder have been paid, (3) whether there are then existing any charges, offsets or defenses against the enforcement by Landlord or Tenant of any agreement, covenant or condition hereof on the part of the other party to be performed or observed (and, if so, specifying the same), and (4) whether there are then existing any defaults by Tenant and known by Landlord in the performance or observance by Tenant of any agreement, covenant or condition hereof on the part of Tenant to be performed or observed and whether any notice has been given to Tenant of any default which has not been cured (and, if so, specifying the same). Any such certificate may be relied upon by a prospective purchaser, mortgagee or trustee or beneficiary under a deed of trust of the Premises or the leasehold estate hereunder or any part thereof.

B. [§1401] Waiver

No waiver of any default under this Lease shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege or option under this Lease shall constitute a waiver, abandonment or relinquishment thereof or prohibit or prevent any election under or

enforcement or exercise of any right, privilege or option hereunder. No waiver of any provision hereof by Landlord or Tenant shall be deemed to have been made unless and until such waiver shall have been reduced to writing and signed by Landlord or Tenant, as the case may be. The receipt and acceptance by Landlord of rent with knowledge of any default under this Lease shall not constitute or operate as a waiver of such default.

Failure by Landlord or Tenant, as the case may be, to enforce any of the terms, covenants or conditions of this Lease for any length of time or from time to time shall not be deemed to waive or decrease the right of Landlord to insist thereafter upon strict performance by Tenant.

C. [§1402] Notices

If at any time after the execution of this Lease, it shall become necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing and shall be served personally or by depositing the same in the registered or certified United States mail, return receipt requested, postage prepaid and (1) if intended for Landlord shall be addressed to:

City Clerk
City of Santa Barbara
P.O. Box 1990
Santa Barbara, California 93102-1990

with a copy to:

Waterfront Director
City of Santa Barbara
132-A Harbor Way
Santa Barbara, California 93109

and (2) if intended for Tenant shall be addressed to:

Mr. Robert Kieding
The Chandlery on the Breakwater, Inc.
125 Harbor Way # 3
Santa Barbara, CA 93109

or to such other address as either party may have furnished to the other in writing as a place for the service of notice. Any notice so mailed shall be deemed to have been given as of the time the same is deposited in the United States mail.

D. [§1403] Corporate Authority

If Tenant signs as a corporation, Tenant covenants that each of the persons executing this Lease on behalf of Tenant is a duly authorized and existing officer of the corporation, that Tenant has, is and shall remain during the term of this Lease qualified to do business in the State of California, that the corporation has full right and authority to enter into this Lease and that each, both or all of the persons signing on behalf of the corporation were authorized to do so. Upon Landlord's request, Tenant shall provide

Landlord with evidence reasonably satisfactory to Landlord confirming the foregoing covenants and warranties.

E. [§1404] No Light, Air or View Easement

Tenant covenants and agrees that no diminution of light, air or view by any structure which may hereafter be erected (whether or not by Landlord) shall entitle Tenant to any reduction or abatement of Base Rent or other amount payable under this Lease, result in any liability of Landlord to Tenant or in any other way affect this Lease or Tenant's obligations hereunder.

F. [§1405] Landlord's Covenant of Quiet Enjoyment

Landlord hereby covenants to Tenant that Landlord has good and marketable fee simple title to the Premises, free and clear of all claims, liens and encumbrances except the Tidelands Grant restrictions. Upon Tenant paying the Base Rent and other amounts payable hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall peaceably hold and quietly enjoy the Premises for the entire term hereof without hindrance, molestation or interruption by Landlord or any party claiming through or under Landlord.

G. [§1406] No Joint Venture

It is agreed that nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other party or cause Landlord to be responsible in any way for the debts or obligations of Tenant or any other party.

H. [§1407] Provisions Subject to Applicable Law

All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law and are intended to be limited to the extent necessary so that they will not render this Lease invalid, unenforceable or not entitled to be recorded under any applicable law. If any term of this Lease shall be held to be invalid, illegal or unenforceable, the validity of the other terms of this Lease shall in no way be affected thereby.

I. [§1408] Miscellaneous

1. Each party hereby agrees to indemnify the other party from and against any real estate brokerage commissions or other such obligations incurred by the indemnifying party as the result of the negotiation or execution of this Lease.

2. Tenant shall not pay any money or provide any other consideration of any kind whatsoever or employ, contract with or sublease to or with any person or entity if such payment of money or provision of other consideration would violate or would have a reasonable likelihood of violating any law, statute, ordinance, directive, regulation, decision or opinion now or hereafter enacted or promulgated by the City of Santa Barbara, the State of California or any governmental public or judicial body, agency or department relating in any manner to conflicts of interest or if such payment or provision of consideration is to a person or entity which has discretionary authority or power of any kind over the

development, use or occupancy of the Premises or any part thereof or with respect to the enforcement or interpretation of this Lease.

3. In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Lease, but this Lease shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

4. Nothing in this Lease shall be construed to create any duty to, any standard of care with reference to or any liability to anyone not a party except as otherwise expressly provided herein.

5. The words "Landlord" and "Tenant" as used herein shall include a corporation and include the plural as well as the singular. Words used in the masculine gender include the feminine and neuter. If there be more than one Landlord and Tenant, the obligations hereunder imposed upon Landlord and Tenant shall be joint and several.

6. The captions used herein are for convenience of reference only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions hereof.

7. Time is of the essence of each and all of the agreements, covenants and conditions of this Lease.

8. This Lease shall be interpreted in accordance with and governed by the laws of the State of California. The language in all parts of this Lease shall be, in all cases, construed according to its fair meaning and not strictly for or against Landlord or Tenant.

10. Tenant agrees to comply with the attached Exhibit "C" - Water and Energy Conservation Guidelines.

11. The area, if any, under sidewalks, driveways or passageways adjoining the Premises or any part thereof is subject to all prior and existing rights of the City of Santa Barbara, and, furthermore, any tax, charge, assessment or rental of whatever form or nature and however denominated, which may hereafter be imposed, at any time or from time to time, by the City of Santa Barbara or by its authority or by any other public authority for the use or occupancy of such area shall be borne and paid by Tenant, except as otherwise herein expressly provided.

12. This Lease constitutes the entire agreement between Landlord and Tenant with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral and written. This Lease may not be amended or modified in any respect whatsoever except by an instrument in writing, approved by the City Council and signed by Landlord and Tenant.

13. Tenant hereby represents, by executing this Lease, that Tenant has reviewed this Lease with an attorney of Tenant's choice or has had a reasonable

opportunity to review this Lease with an attorney of Tenant's choice and (with knowledge of Tenant's right to do so) has elected against seeking such advice, before signing this Lease.

Landlord hereby represents, by executing this Lease, that Tenant has been informed of Tenant's right to have this Lease reviewed by legal counsel of Tenant's choice and has been afforded a reasonable opportunity to seek such advice.

14. Animals. Tenant agrees that no animals under the ownership or control of the Tenant or Tenant's employees will be permitted in the buildings or premises. This Section shall not apply to assistance dogs..

15. PERSONAL GUARANTY. Performance of and compliance with all terms and conditions of this Lease, particularity, but not limited to , those relating to the prompt payment of rent to the City shall be personally guaranteed to the City by Robert Kieding in the form of a guaranty attached hereto as Exhibit E.

(signatures appear on following page)

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease by proper persons thereunto duly authorized as of the date first hereinabove written.

LANDLORD:

TENANT:

CITY OF SANTA BARBARA
A Municipal Corporation

The Chandlery on the Breakwater, Inc

John N. Bridley
Waterfront Director

Robert B. Kieding, President

ATTEST:

Cynthia M. Rodriguez, CMC
City Clerk Services Manager

APPROVED AS TO CONTENT:

Scott Riedman
Waterfront Business Manager

APPROVED AS TO FORM:

Stephen P. Wiley
City Attorney

By _____
Sarah J. Knecht, Assistant City Attorney

BUSINESS TAX COMPLIANCE:

Certificate No. _____

By _____

APPROVED AS TO INSURANCE:

Brad Landreth, Risk Manager